

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CARL LOWE and KEARBY KAISER, on)
behalf of themselves and others similarly) Case No. 1:14-cv-03687
situated,)
)
Plaintiffs,)
)
)
v.)
)
CVS PHARMACY, INC., MINUTECLINIC,) Hon. Judge John Z. Lee
LLC, and WEST CORPORATION,) Hon. Mag. Judge M. David Weisman
)
Defendants.)

**DECLARATION OF EDWARD A. BRODERICK IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL**

1. I make this declaration in support of the Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, to describe the work done in investigating and prosecuting the claims in the case, to set forth my qualifications to serve as class counsel and to state my opinion that the settlement represents an excellent result for the Settlement Class and merits preliminary approval.

2. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts, I am over 18 years of age, am competent to testify and make this declaration on personal knowledge.

Work Done in Investigating and Prosecuting the Case

3. I was involved in every stage of litigation in this case, from pre-trial investigation, analysis of Plaintiff's potential claims, drafting and researching the complaint and discovery work, review of documents, motion practice, including moving for class certification, discovery responses, depositions and general preparation for trial. I also

additionally participated in settlement negotiations and strategy, participated in the mediation process and contributed on preparing the proposed settlement agreement and motion for preliminary approval.

4. The litigation was hard fought throughout, with Defendants represented by extremely experienced and capable counsel.

5. Plaintiff's counsel additionally retained an expert witness to analyze Defendants' dialer and identify class members called on cell phones.

6. On November 9, 2015, the Parties engaged in an all-day, in-person, arms-length mediation with the Rodney A. Max, Esq. This mediation did not result in settlement, and the Parties thereafter continued to aggressively litigate the case, including through contested motion practice, extensive adversarial discovery, and engaging in two sets of briefings on class certification, in addition to oral argument. As part of the mediation process, both parties provided extensive written analyses of the legal and factual issues in the case.

7. On September 21, 2018, the Parties again participated in mediation, with Hon. Diane M. Welsh (Ret.) of JAMS. This mediation was, likewise, unsuccessful.

8. In April 2019, counsel for the Parties reopened communications to determine the possibility that this case could be resolved through negotiated settlement, which efforts were ultimately successful at reaching an agreement in principle.

9. Based on their investigation and negotiations, which included extensive class and expert discovery, and taking into account the sharply contested issues involved, the risks, uncertainty and cost of further prosecution of this litigation, and the substantial benefits to be received by Settlement Class Members pursuant to this Settlement Agreement, Plaintiff and his Counsel have concluded that a settlement with Defendants on the terms set forth herein is fair,

reasonable, adequate and in the best interests of the Settlement Class Members.

10. At all times, the Parties' settlement negotiations were adversarial, non-collusive, and at arm's-length. These discussions culminated in the Settlement Agreement for which Plaintiff seeks preliminary approval.

11. The initial estimate from AB Data is that mailed notice will reach more than 90% of the class members. This plan far exceeds the benchmark of 70% notice reach endorsed by the Federal Judicial Center. *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*.

12. In light of significant legal issues facing Plaintiff, and in light of the excellent result and the fact that class members receiving mailed notice will not need to make claims, I believe the settlement here is fair, reasonable, and adequate, and in the best interest of the Settlement Class. Co-Counsel and I estimate that the average per class member payout will be approximately \$35 or more, based on \$300,000 in estimated notice and administration costs, the \$5,000,000 requested attorneys' fees, less than approximately \$450,000 in estimated expenses, and the \$15,000 requested incentive award.

13. Co-counsel and I estimate that total final expenses between the four firm's representing Plaintiff through final approval will not exceed \$450,000—the bulk of which were incurred through expert costs and other discovery. The final expenses will be reconciled and presented to the Court in Plaintiff's motion for an award of attorney's fees, expenses and a class representative award, to be filed thirty days after the Settlement Notice Deadline, well before the Opt Out and Objection Deadline. *See Agr. Ex. D at 8.*

Qualifications of Counsel

14. I have extensive experience in the prosecution of class actions on behalf of consumers, particularly claims under the TCPA. As a result of my extensive experience litigating TCPA class claims, I am well-aware of the significant time and resources needed to litigate such actions, and my firm possesses the resources necessary to prosecute these actions successfully. My firm keeps contemporaneous time records, and the rates for our attorneys and personnel are commensurate with my experience and are commensurate with market rates in Boston for attorneys with similar levels of experience. My hourly rate and that of my former partner Anthony Paronich have been approved as reasonable by numerous federal courts in approving settlements.

15. I am a 1993 graduate of Harvard Law School. Following graduation from law school, I served as a law clerk to the Honorable Martin L.C. Feldman, United States District Judge in the Eastern District of Louisiana.

16. Following my clerkship, from 1994 to December 1996, I was an associate in the litigation department of Ropes & Gray in Boston, where I gained class action experience in the defense of a securities class action, *Schaeffer v. Timberland*, in the United States District Court in New Hampshire, and participated in many types of complex litigation.

17. From January 1997 to March 2000, I was an associate with Ellis & Rapacki, a three-lawyer Boston firm focused on the representation of consumers in class actions.

18. In March 2000, I co-founded the firm of Shlansky & Broderick, LLP, focusing my practice on complex litigation and the representation of consumers.

19. In 2003, I started my own law firm focusing exclusively on the litigation consumer class actions.

20. A sampling of other class actions in which I have represented classes of consumers follows:
- i. *In re General Electric Capital Corp. Bankruptcy Debtor Reaffirmation Agreements Litigation*, (MDL Docket No. 1192) (N.D. Ill) (nationwide class action challenging reaffirmation practices of General Electric Capital Corporation, settlement worth estimated \$60,000,000.)
 - ii. *Hurley v. Federated Department Stores, Inc., et al*, USDC D. Mass. Civil Action No. 97-11479-NG (nationwide class action challenged bankruptcy reaffirmation practices of Federated Department Stores and others; \$8,000,000 recovery for class.)
 - iii. *Valerie Ciardi v. F. Hoffman LaRoche, et al*, Middlesex Superior Court Civil Action No. 99-3244D, (class action pursuant to Massachusetts Consumer Protection Act, M.G.L. c. 93A brought on behalf of Massachusetts consumers harmed by price-fixing conspiracy by manufacturers of vitamins; settled for \$19,600,000.
 - iv. *Shelah Feiss v. Mediaone Group, Inc, et al*, USDC N. District Georgia, Civil Action No. 99-CV-1170, (multistate class action on behalf of consumers; estimated class recovery of \$15,000,000--\$20,000,000.)
 - v. *Mey v. Herbalife International, Inc.*, Ohio County Circuit Court (West Virginia), Civil Action No. 01-cv-263. \$7,000,000 TCPA class action settlement granted final approval on February 5, 2008 following the grant of a contested class certification motion.
 - vi. *Mulhern v. MacLeod d/b/a ABC Mortgage Company*, Norfolk Superior Court (Massachusetts), Civil Action No. 05-01619-BLS. TCPA class settlement of \$475,000 following the grant of a contested class certification motion, granted final approval by the Court on July 25, 2007.
 - vii. *Evan Fray-Witzer, v. Metropolitan Antiques, LLC*, Suffolk Superior Court (Massachusetts), Civil Action No. 02-5827-BLS. After the grant of a contested class certification motion, a companion case went to the Massachusetts Supreme Judicial Court, which issued a decision finding insurance coverage. *See Terra Nova Insurance v. Fray-Witzer et. al.*, 449 Mass. 206 (2007). There was then a TCPA class settlement of \$1,800,000 which was granted final approval.
 - viii. *Shonk Land Company, LLC v. SG Sales Company*, Circuit Court of Kanawha County (West Virginia), Civil Action No. 07-C-1800 TCPA class settlement for \$2,450,000, final approval granted in September of 2009.
 - ix. *Mann & Company, P.C. v. C-Tech Industries, Inc.*, USDC, D. Mass., Civil Action

- No. 1:08-CV-11312-RGS, TCPA class settlement of \$1,000,000, final approval granted in January of 2010.
- x. *Evan Fray Witzer v. Olde Stone Land Survey Company, Inc.*, Suffolk Superior Court (Massachusetts), Civil Action No. 08-04165. TCPA class settlement \$1,300,000 granted final approval on February 3, 2011.
 - xi. *Milford & Ford Associates, Inc. and D. Michael Collins vs. Cell-Tek, LLC*, USDC, D. Mass., Civil Action No. 1:09-cv-11261-DPW. TCPA class settlement of \$1,800,000, final approval granted August 17, 2011.
 - xii. *Collins v. Locks & Keys of Woburn, Inc.*, Suffolk Superior Court (Massachusetts), Civil Action No. 07-4207-BLS2, TCPA class settlement of \$2,000,000 following the granting of a contested class certification motion, granted final approval on December 14, 2011.
 - xiii. *Brey Corp t/a Hobby Works v. Life Time Pavers, Inc.*, Circuit Court for Montgomery County (Maryland), Civil Action No. 349410-V, TCPA class settlement of \$1,575,000 granted final approval in March of 2012.
 - xiv. *Collins, et al v. ACS, Inc. et al*, USDC, D. Mass., Civil Action No. 10-CV-11912, TCPA class settlement \$1,875,000 granted final approval on September 25, 2012.
 - xv. *Desai and Charvat v. ADT Security Services, Inc.*, USDC, ND. Ill., Civil Action No. 11-CV-1925, TCPA class settlement of \$15,000,000 granted final approval on June 21, 2013.
 - xvi. *Kensington Physical Therapy, Inc. v. Jackson Therapy Partners, LLC*, USDC, D. MD, Civil Action No. 11-CV-02467, TCPA class settlement of \$4,500,000 granted final approval on February 12, 2015.
 - xvii. *Jay Clogg Realty Group, Inc. v. Burger King Corporation*, USDC, D. MD., Civil Action No. 13-cv-00662, TCPA class settlement of \$8,500,000 granted final approval on April 15, 2015.
 - xviii. *Charvat v. AEP Energy, Inc.*, USDC, ND. Ill., 1:14-cv-03121, TCPA class settlement of \$6,000,000 granted final approval on September 28, 2015.
 - xix. *Mey v. Interstate National Dealer Services, Inc.*, USDC, ND. Ga., 1:14-cv-01846-ELR, TCPA class settlement of \$4,200,000 granted final approval on June 8, 2016.
 - xx. *Philip Charvat and Ken Johansen v. National Guardian Life Insurance Company*, USDC, WD. Wi., 15-cv-43-JDP, TCPA class settlement for \$1,500,000 granted final approval on August 4, 2016.
 - xxi. *Bull v. US Coachways, Inc.*, USDC, ND. Ill., 1:14-cv-05789, TCPA class

settlement finally approved on November 11, 2016 with an agreement for judgment in the amount of \$49,932,375 and an assignment of rights against defendant's insurance carrier.

- xxii. *Toney v. Quality Resources, Inc., Cheryl Mercuris and Sempris LLC, et al.*, USDC, ND. Ill., 1:13-cv-00042, TCPA class settlement of \$2,150,000 was granted final approval on December 1, 2016 with one of three defendants, and an assignment of rights against defendant's insurance carrier. Second settlement on behalf of class against two remaining defendants of \$3,300,000 granted on September 25, 2018.
- xxiii. *Smith v. State Farm Mut. Auto. Ins. Co.*, et. al., USDC, ND. Ill., 1:13-cv-02018, TCPA class settlement of \$7,000,000.00 granted final approval on December 8, 2016.
- xxiv. *Mey v. Frontier Communications Corporation*, USDC, D. Ct., 3:13-cv-1191-MPS, a TCPA class settlement of \$11,000,000 granted final approval on June 2, 2017.
- xxv. *Biringer v. First Family Insurance, Inc.*, USDC, ND. Fla., a TCPA class settlement of \$2,900,000 granted final approval on April 24, 2017.
- xxvi. *Abramson v. Alpha Gas and Electric, LLC*, USDC, SD. NY., 7:15-cv-05299-KMK, a TCPA class settlement of \$1,100,000 granted final approval on May 3, 2017.
- xxvii. *Heidarpour v. Central Payment Co.*, USDC, MD. Ga., 4:15-cv-139 (CDL), a TCPA class settlement of \$6,500,000 granted final approval on May 4, 2017.
- xxviii. *Abante Rooter and Plumbing, Inc. v. New York Life Insurance Company*, USDC, SD. NY., 1:16-cv-03588-BCM, a TCPA class settlement of \$3,250,000 granted final approval on February 27, 2018.
- xxix. *Abramson v. CWS Apartment Home, LLC*, USDC, WD. Tex., 16-cv-01215, a TCPA class settlement of \$368,000.00 granted final approval on May 19, 2017.
- xxx. *Thomas Krakauer v. Dish Network, L.L.C.*, USDC MDNC, Civil Action No. 1:14-CV-333 on September 9, 2015. Following a contested class certification motion, this case went to trial in January of 2017 returning a verdict of \$20,446,400. On May 22, 2017, this amount was trebled by the Court after finding that Dish Network's violations were "willful or knowing", for a revised damages award of \$61,339,200. (Dkt. No. 338).
- xxxi. *Mey v. Got Warranty, Inc., et. al.*, USDC, NDWV., 5:15-cv-00101-JPB-JES, a TCPA class settlement of \$650,000 granted final approval on July 26, 2017.

- xxxii. *Mey v. Patriot Payment Group, LLC*, USDC, NDWV., 5:15-cv-00027-JPB-JES, a TCPA class settlement of \$3,700,000 granted final approval on July 26, 2017.
- xxxiii. *Charvat and Wheeler v. Plymouth Rock Energy, LLC*, et al, USDC, EDNY, 2:15-cv-04106-JMA-SIL, a TCPA class settlement of \$1,675,000 granted final approval on July 31, 2018.
- xxxiv. *Mey v. Venture Data, LLC and Public Opinion Strategies*, USDC, NDWV, 5:14-cv-123. Final approval of TCPA settlement granted on September 8, 2018.
- xxxv. *In Re Monitronics International, Inc. Telephone Consumer Protection Act Litigation*, USDC, NDWV, 1:13-md-02493-JPB-MJA, a TCPA class settlement of \$28,000,000 granted final approval on June 12, 2018.
- xxxvi. *Abante Rooter and Plumbing, Inc. v. Alarm.com, Inc.*, USDC, NDCA 4:15-cv-06314-YGR. TCPA class settlement of \$28,000,000 granted preliminary approval on December 19, 2018.
- xxxvii. *Abante Rooter and Plumbing, Inc. v. Alarm.com, Inc.*, USDC, NDCA 4:15-cv-06314-YGR. TCPA class settlement of \$28,000,000 granted preliminary approval on December 19, 2018.

PURSUANT TO 28 U.S.C. § 1746, I DECLARE SIGNED UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED THIS 26th DAY OF JULY, 2019, IN THE COMMONWEALTH OF MASSACHUSETTS.

/s/ Edward A. Broderick
Edward A. Broderick